**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 476**

**DATE OF QUESTION: 23 AUGUST 2019**

**DATE OF SUBMISSION: 6 SEPTEMBER 2019**

**Adv G Breytenbach (DA) to ask the Minister of Justice and Correctional Services:**

Whether the National Prosecuting Authority (NPA) intends to defend its constitutional independence in the review application against the Public Protector’s *Report on an Investigation into Allegations of a Violation of the Executive Ethics Code through an Improper Relationship between the President and African Global Operations, formerly known as Bosasa*, Report 37 of 2019-20, wherein the Public Protector instructs the NPA to conduct further investigation into *prima facie* evidence of money laundering as uncovered during her investigation, and deal with it accordingly; if not, why not; if so, what are the relevant details?

**NW1468E**

**REPLY:**

I have been informed by the NDPP as follows:

“Paragraphs 8.2 and 9.4 of the Report of the Public Protector (Report), read together, order the NDPP to conduct an investigation into ‘prima facie evidence of money laundering’, and to submit an implementation plan for the approval of the Public Protector, within 30 days of publication of the Report (“the orders”). The Public Protector has agreed to stay the orders, pending the review of the Report.

In the spirit of co-operative governance, as is peremptory under Section 41 of the Constitution, the NDPP wrote to the Public Protector seeking clarity on whether the orders were meant merely to constitute notifying the NDPP of her opinion that the facts disclose the commission of an offence, as contemplated in s6(4)(c)(i) of the Public Protector Act.

The Public Protector responded by stating that the order in paragraph 8.2 is a referral to the NDPP on the basis of her opinion that the facts disclose a commission of an offence as, contemplated by s6(4)(c)(i), and that the order requiring the NDPP to submit a report for her approval, is a logical and legal consequence of paragraph 8.2 (read with paragraphs 7.1.3 and 7.3.3).

The NDPP understands that response to mean that the Public Protector persists with the orders. These orders impact on and infringe the constitutional and statutory mandate of the NPA to investigate and prosecute crime, free of supervision or interference by another party and without fear or favour.

The mandate of a Public Protector *vis a vis* an NDPP, in terms of the Constitution and the Public Protector Act is restricted to notifying the authority charged with prosecutions of his or her opinion that the facts disclose the commission of an offence. It is therefore a constitutional issue that requires the NDPP, in the interests of the independence of the NPA, to file an affidavit supporting the review to set aside the remedial orders against the NDPP in paragraphs 8.2 and 9.4 of the Report.

The NDPP will file an affidavit after having seen the record of decision and any supplementary affidavits by the applicants.

It must be emphasised that this is purely a legal issue and does not in any way impact on the NDPP’s consideration of the matter in light of the opinion of the Public Protector that the facts disclose the commission of an offence”.